

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

In re:

ARK LABORATORY, LLC,

Debtor.

Case No. 23-43403-MLO
Chapter 11
Hon. Maria L. Oxholm

**SUCCESSOR TRUSTEE’S MOTION TO ESTABLISH PROCEDURES
GOVERNING AVOIDANCE ACTION ADVERSARY PROCEEDINGS**

Jason W. Bank, solely in his capacity as Successor Trustee of the Ark Laboratory Trust (“Trustee”), by his attorneys, Taft Stettinius & Hollister LLP, submits this motion (the “Motion”) seeking an order approving proposed procedures governing avoidance action adversary proceedings (the “Procedures”) under chapter 5 of title 11 of the United States Bankruptcy Code (the “Bankruptcy Code”). In support of the Motion, the Trustee alleges as follows:

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over this matter under §§ 1334 and 157(a) of title 28 of the United States Code.
2. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).
3. Venue is proper in the United States Bankruptcy Court for the Eastern District of Michigan (the “Court”) under 28 U.S.C. §§ 1408 and 1409.
4. The statutory predicates for the relief requested in this Motion are Sections 544, 547, 549, 550, and 105(a) of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 7016.

BACKGROUND

5. On April 12, 2023 (the “Petition Date”), the Debtor commenced a voluntary case under chapter 11 of the Bankruptcy Code (the “Chapter 11 Case”).

6. Following the Petition Date, the Debtor remained in possession of its assets and continued to operate and manage its business as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code to implement the wind down of the Debtor’s operations and the liquidation of the Debtor’s assets.

7. On September 19, 2023, the Debtor filed its *Combined Disclosure Statement and Plan of Liquidation* [ECF No. 249] (the “Initial Plan” and, together with the First Amended Plan and the Second Amended Plan, each as defined below, the “Plan”).

8. On October 13, 2023, the Debtor filed the *Plan Supplement*, that contained, among other things, (i) a revised list of the Causes of Action, including Avoidance Actions, each as defined under the Plan (collectively, the “Causes of Action” and/or “Avoidance Actions”), (ii) a list of the Executory Contracts proposed to be assumed under the Plan, and (iii) the Liquidating Trust Agreement and Declaration of Trust [ECF No. 302] (the “Initial Plan Supplement”).

9. On October 16, 2023 and October 22, 2023, the Debtor filed *Corrected Plan Supplements* [ECF Nos. 303, 310 and 366] (collectively, the “Corrected Plan Supplement” and, together with the Initial Plan Supplement, the Plan Supplement”).

10. On November 26, 2023, the Debtor filed a *First Amended Plan of Liquidation* [ECF No. 365] (the “First Amended Plan”) and, on November 30, 2023, the Debtor filed a *Second Amended Plan of Liquidation* [ECF No. 384] (the “Second Amended Plan”).

11. On December 1, 2023, the Court entered its *Findings of Fact, Conclusions of Law and Order (I) Granting Final Approval of the Debtor’s Disclosure Statement and Plan Supplement, and (II) Confirming Debtor’s Second Amended Plan of Liquidation* [ECF No. 392] (the “Confirmation Order”) that, among other things, approved the Ark Laboratory Trust and the appointment of the Liquidating Trustee established under the Liquidating Trust Agreement and Declaration of Trust.¹

12. The Plan became effective on December 14, 2023, as reflected in the *Notice of Occurrence of Effective Date of Confirmed Second Amended Plan of Liquidation* [ECF No. 413] (the “Notice of Effective Date”), that confirmed that all conditions set forth in Article VII.A of the Plan were satisfied on December 14, 2023, and thus, the Effective Date of the Plan as defined in Article I.B.35 of the Plan occurred on December 14, 2023 (the “Effective Date”).

¹ Capitalized terms not otherwise defined herein shall be ascribed the definition contained in the Plan and/or the Confirmation Order.

13. As part of the Confirmation Order, the Court approved the *Liquidating Trust Agreement and Declaration of Trust* (the “Initial Trust Agreement”) that was subsequently amended on July 9, 2024 through the *First Amended and Restated Liquidating Trust Agreement and Declaration of Trust* (the “Amended Trust Agreement” and, together with the Initial Trust Agreement, the “Liquidating Trust Agreement”) pursuant to order of the Court [ECF No. 649].

14. On the Effective Date, all of the assets of the Debtor, including the Causes of Action and Avoidance Actions, were transferred to, and vested in the Ark Laboratory Trust and Paul R. Hage, as the Liquidating Trustee, became the sole representative of the Debtor’s estate.

15. The Plan defines Causes of Action as, *inter alia*, all claims, suits, and Avoidance Actions under the Bankruptcy Code not previously released, compromised or settled in connection with the Plan, each of which claim is preserved under the Plan, the Plan Supplement and the Confirmation Order.

16. On July 2, 2024, this Court appointed Jason W. Bank as the Successor Trustee of the Ark Laboratory Trust [ECF No. 644] and, as a result thereof, the

Successor Trustee is now vested with the authority granted under the Liquidating Trust Agreement.²

17. The Trustee has identified numerous potential chapter 5 Avoidance Actions that he may pursue as adversary proceedings before this Court (the “Avoidance Action Adversary Proceeding(s)”). In the interest of reducing the burden on the Court in handling these matters and the administrative costs associated therewith, the Trustee respectfully requests that the Court enter an order establishing streamlined procedures governing the Avoidance Action Adversary Proceedings.³

PROCEDURES REQUESTED

18. The Trustee’s goal is to pursue and potentially resolve each Avoidance Action Adversary Proceeding as efficiently as possible, provide just and speedy resolutions of each matter, and maximize returns to creditors holding allowed claims in the Debtor’s bankruptcy estate.

19. The Procedures, as set forth in **Exhibit A** attached to this Motion, provide a practical framework that: (a) promotes judicial economy; (b) hastens the time within

² On May 29, 2024, Paul R. Hage provided notice that he intended to resign from his role as the Liquidating Trustee as part of the winding down of his legal practice due to his recent appointment to serve as a bankruptcy judge in this Court.

³ The proposed procedures identified in this Motion for which the Trustee seeks approval from the Court do not apply to that certain adversary proceeding known as *Jason W. Bank, solely in his capacity as Successor Trustee of the Ark Laboratory Trust v. Grossi, et al.*, Adv. P. No. 23-04496-MLO (the “Insider Cause of Action”), for which separate scheduling orders have been entered by this Court.

which Avoidance Action Adversary Proceedings are resolved; and (c) avoids unnecessary litigation costs by providing a mechanism to all parties for consolidating common issues of law and fact through a process designed to reduce—and in some cases eliminate—the need for the Court to engage in an individualized review of every case management issue that may arise.

20. The Trustee is also seeking approval of a proposed form of Notice Regarding Procedures Governing Adversary Proceedings (the “Notice of Procedures”), set forth in attached as **Exhibit B**, to be provided to defendants at the time the Trustee serves a summons and a copy of the complaint in any Avoidance Action Adversary Proceeding, except for the Insider Cause of Action.

21. In general, the Procedures and the Notice of Procedures establish uniform guidelines for conducting Avoidance Action Adversary Proceedings, including procedures for mediation. The Trustee, therefore, requests that the Court enter an order authorizing and adopting the Procedures substantially in the form attached to this Motion as **Exhibit 1**, which incorporate the following key components:

- a. **Omnibus Hearings:** The Procedures provide that the Court schedule regular hearings to address routine matters in the Avoidance Action Adversary Proceedings at the same time (collectively, the “Omnibus Hearings” and each an “Omnibus Hearing”), and at which the Trustee can report on his progress in pursuing the Avoidance Action Adversary Proceedings to the Court, with such schedule to be set once all of the complaints commencing the Avoidance Action Adversary Proceedings are filed with the Court. By scheduling the proposed Omnibus Hearing dates, the

administration of the Avoidance Action Adversary Proceedings will be significantly streamlined—clarifying for all parties involved when matters will be heard and who must appear at the Omnibus Hearings.

- b. **Discovery Protocol:** The Procedures establish a uniform, streamlined discovery protocol by modifying certain requirements under Rule 26 of the Federal Rules of Civil Procedure, as adopted by the Bankruptcy Rules. The proposed modifications will facilitate the expeditious administration of the Avoidance Action Adversary Proceedings while simultaneously conserving the estate’s assets and the Court’s judicial resources.
- c. **Mediation:** Unless one of the parties files an election form to opt out of mediation as provided in subparagraph (d) below, the Procedures provide for the mediation of all Avoidance Action Adversary Proceedings before trial in order to afford the parties the opportunity to resolve these matters without incurring the burdensome costs associated with trial. The cost of mediation will be shared equally by the estate and the defendant.
- d. **Opt Out:** The Procedures give any defendant an opportunity to opt out of mediation for cause shown. Any defendant who believes it will be unduly prejudiced by the Procedures will have the opportunity to make that argument to the Court after it has been served with a complaint.

BASIS FOR RELIEF

22. Section 105(a) of the Bankruptcy Code affords bankruptcy courts the power to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions [of the Bankruptcy Code].”

23. Establishing uniform procedures to govern the Avoidance Action Adversary Proceedings will assist the Trustee and the Court in administering the Avoidance Action Adversary Proceedings efficiently and fairly. By adopting the Procedures, parties will have a clear roadmap for future proceedings and will simultaneously have the opportunity to reach amicable and speedy resolutions of the Avoidance Action Adversary Proceedings where possible, avoiding costly litigation which will necessarily reduce recoveries for the estate.

CONCLUSION

24. A proposed order granting the relief sought herein is attached as **Exhibit 1** to this Motion.

25. The Procedures promote judicial economy, hasten the time within which the Avoidance Action Adversary Proceedings can be resolved, and will allow the estate to limit fees and avoid unnecessary litigation costs.

WHEREFORE, the Trustee requests that the Court grant this Motion, enter the Order approving the proposed Procedures in substantially the same form attached to this Motion as **Exhibit 1**, and grant any and all other just and equitable relief justified herein.

Respectfully submitted,

TAFT STETTINIUS & HOLLISTER, LLP

By: /s/ Judith Greenstone Miller

Judith Greenstone Miller (P29208)

Kimberly Ross Clayson (P69804)

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(248) 351-3000

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*Attorneys for Jason W. Bank, Solely in his
Capacity as Successor Trustee of the Ark
Laboratory Trust*

Dated: November 14, 2024

EXHIBIT 1
(PROPOSED ORDER)

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

In re:

ARK LABORATORY, LLC,

Debtor.

Case No. 23-43403-MLO
Chapter 11
Hon. Maria L. Oxholm

**ORDER ESTABLISHING PROCEDURES GOVERNING
AVOIDANCE ACTION ADVERSARY PROCEEDINGS**

THIS MATTER having come before the Court¹ on the Trustee's *Motion to Establish Procedures Governing Avoidance Action Adversary Proceedings* [ECF No. ____] (the "Motion"), the Court, having reviewed and considered the Motion and objections to the Motion, if any, along with the statements and arguments of counsel during the hearing on the Motion; all objections, if any, having been withdrawn or denied; due notice having being given, is of the opinion that the Motion and Procedures should be approved.

Therefore, it is hereby ORDERED that:

- (1) The Procedures, attached to the Motion as **Exhibit A**, are hereby approved;

¹ All capitalized terms contained herein shall have the meanings ascribed to them in the Motion unless otherwise stated to the contrary herein.

- (2) The Notice of Procedures, attached to the Motion as **Exhibit B**, is hereby approved; and
- (3) The Trustee shall serve a copy of the Procedures, along with a copy of the Notice of Procedures, on each defendant to an Avoidance Action Adversary Proceeding, along with a copy of the summons and complaint in the relevant Avoidance Action Adversary Proceeding.

EXHIBIT A
PROCEDURES

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

In re:

ARK LABORATORY, LLC,

Debtor.

Case No. 23-43403-MLO

Chapter 11

Hon. Maria L. Oxholm

**PROCEDURES GOVERNING AVOIDANCE
ACTION ADVERSARY PROCEEDINGS**

This cause came before the Court on the Motion¹ of the Trustee to establish the Procedures governing Avoidance Action Adversary Proceedings. The Court entered an order approving the Procedures [ECF No. ____]. Under the terms of that order, the following Procedures shall govern Avoidance Adversary Proceedings as defined in the Motion:

I. Applicability of Procedures

A. *General Applicability*

The Procedures set forth herein shall apply to all Avoidance Action Adversary Proceedings, except as otherwise provided below. The Procedures shall continue to govern the Avoidance Action Adversary Proceedings unless otherwise expressly provided herein or as otherwise expressly modified by order of the Court.

B. *Objections*

Any defendant may object to being subject to the Procedures by filing and serving a written objection within 21 days of being served with a summons and complaint. Upon receipt of a timely objection, the Court shall hear such objection at the next Omnibus Hearing and determine whether, and to what extent the Procedures shall apply to an objecting defendant. An objecting defendant has the burden of establishing good cause to be exempted from the Procedures.

¹ All capitalized terms contained herein shall have the meanings ascribed to them in the Motion unless otherwise stated to the contrary herein.

C. *The Insider Cause of Action*

The Procedures shall not apply to the Insider Cause of Action.

II. Service of Procedures; Notices of Deadlines

At the time the Trustee serves a summons and copy of the complaint in any Avoidance Action Adversary Proceeding, except for the Insider Cause of Action, the Trustee shall simultaneously serve on each defendant (i) a copy of the Procedures, (ii) the Order approving the Procedures, (iii) a cover notice, and (iv) the Notice of Procedures.

III. Track One and Two.

The Avoidance Action Adversary Proceedings shall be mediated pursuant to two tracks based upon the monetary amount pled in the applicable complaint. Track One shall be cases where the amount sought is less than \$50,000, Track Two shall be cases where the amount sought is over \$50,000.

IV. Discovery Matters & Protocol

A. *Continued Adversary Proceedings.*

All Avoidance Action Adversary Proceedings shall be deemed Continued Adversary Proceedings unless the named defendant(s) in the Avoidance Action Adversary Proceeding submits an Election Notice (defined below) in accordance with the Procedures. For all Continued Adversary Proceedings, the following provisions of the Federal Rules of Civil Procedure (the “Rules”) as adopted by the Bankruptcy Rules shall be modified as follows:

- (1) Suspension of Certain Rule 26 Requirements
Parties to Continued Adversary Proceedings **do not** need to file Rule 26(f) reports.

Informal Discovery

Parties to a Continued Adversary Proceeding may engage in informal discovery by exchanging information to facilitate settlement. During this period, the parties may not take depositions or serve formal discovery requests on each other including, but not limited to, requests for production of documents; interrogatories; or requests for admissions (collectively, “Discovery Requests”).

The Trustee shall inform the Court of the status of Continued Adversary Proceedings on or before each Omnibus Hearing date.

B. Disputed Adversary Proceedings.

(1) Election Notice

Any defendant may seek to elect to deem a Continued Adversary Proceeding a Disputed Adversary Proceeding by filing a motion, upon a showing of good cause with the Court (the “Opt-Out Motion”), upon notice and opportunity to all counsel of record in the Continued Adversary Proceeding.

If the Court grants the Opt-Out Motion, such opt out election shall be binding on all parties to the Continued Adversary Proceeding, and any Continued Adversary Proceeding in which an Opt-Out Motion has been granted, after which a Continued Adversary Proceeding shall be considered a Disputed Adversary Proceeding, subject to the scheduling and discovery guidelines set forth below.

(2) Modified Rule 26 Requirements

Parties to Disputed Adversary Proceedings are not required to participate in a Rule 26(f) discovery conference or file a Rule 26(f) discovery report with the Court.

Parties to Disputed Adversary Proceedings shall file and serve initial disclosures under Rule 26(a) within 30 days from the date an Election Notice is served in accordance with the Procedures (the “Initial Disclosure Date”).

(3) Discovery Schedule

All written and oral fact discovery shall be completed within 6 months of the Initial Disclosure Date (the “Discovery Deadline”) without prejudice to any party to a Disputed Adversary Proceeding requesting an extension of the Discovery Deadline.

(4) Initial Pretrial Conference

A Disputed Adversary Proceeding shall be set for an initial pretrial status hearing (the “Pretrial Status Hearing”) at the first Omnibus Hearing that is at least 14 days after the Discovery Deadline. Upon the close of discovery, the Trustee shall promptly inform the Court and the defendant of such occurrence, and the proposed Pretrial Status Hearing date. Unless otherwise excused by the Court for good cause shown, all parties to Disputed Adversary Proceedings shall appear at the Pretrial Status Hearing.

V. Mediation

The parties to a Continued Adversary Proceeding are required to engage in good faith mediation, pursuant to the terms and conditions set forth below, within 90 days after the defendant files an answer to the complaint. The parties to a Disputed Adversary Proceeding may engage in facilitative mediation in accordance with E.D. Mich. LBR 7016-2, pursuant to the terms and conditions set forth below, at any time after the defendant files an answer to the complaint.

A. *Location*

Mediations shall be held at a location selected by the mediator or virtually through video conference.

B. *Mediation Cost*

The cost of mediation shall be split equally between the defendant and the estate. The mediator's fees are fixed as follows:

Track One: \$1,500 per party per case.

Track Two: \$3,000 per party per case.

Each party shall pay its portion of the mediator's fee before the commencement of the mediation. The parties shall pay the mediator's reasonable expenses, pro rata and per case, within 14 days after billing by the mediator. The total fees and expenses of the mediator shall be paid by any party that cancels with less than 24 hours' notice or that fails to appear at a mediation.

C. *Mediators*

Continued Adversary Proceedings and Disputed Adversary Proceedings shall be mediated by a mediator listed on the approved list of mediators on the Court's webpage without seeking approval from the Court.

(1) Participation in Mediation

Parties who participate in mediation shall do so as scheduled and in good faith, with a view toward reaching a consensual resolution. Each mediation shall be attended in person or virtually (as determined by the mediator) by a representative of the parties with full settlement authority and by counsel for the defendant, if the defendant is represented by legal counsel, as well as counsel for the Trustee.

(2) Mediator's Directives

The mediator, in a separate document or other communication that will not be filed with the Court, may require that the parties provide him or her with relevant papers and exhibits, position statements, and

settlement proposals for use during mediation. The mediator may continue a mediation that has been commenced if the mediator determines that a continuation is in the best interests of the parties. The mediator may establish such other procedures as the mediator deems appropriate in accordance with E.D. Mich. LBR 7016-2.

(1) Failure to Appear

Upon notice and a hearing, a party's failure to appear at Mediation may result in a default judgment and/or sanctions. The mediator shall promptly file a notice when any party fails to appear at Mediation.

D. Confidential Settlement Communications

Under Rule 408 of the Federal Rules of Evidence, all settlement discussions and communications between and among the parties and the mediator in connection with mediation will be confidential and inadmissible at trial.

E. Report on Mediation

The Mediator shall file a report at the conclusion of mediation stating whether the Continued Adversary Proceeding or the Disputed Adversary Proceeding has or has not settled. Additionally, the Trustee will advise the Court of the results of all concluded mediations at each regularly scheduled Omnibus Hearing as set forth below.

F. Conflict of Interest

If a proposed Mediator's law firm represents any creditor or party in interest in the Chapter 11 Case, then such proposed Mediator shall not be eligible to serve as a mediator for an Avoidance Action Adversary Proceeding.

G. Failure to Achieve Settlement of a Continued Adversary Proceeding at Mediation

If the parties to a Continued Adversary Proceeding are unable to resolve and to settle the claims subject to the Avoidance Action Adversary Proceeding at mediation, the Continued Adversary Proceeding shall be treated as a Disputed Adversary Proceeding.

VI. Omnibus Status & Motion Hearings

The Court shall hold regular Omnibus Hearings in connection with Adversary Proceedings, at which time the Trustee will present a status report on the Adversary Proceedings generally, and during which all substantive motions will be heard, unless the Court schedules another time for a particular motion.

A. Omnibus Hearing Dates

As soon as practicable after the filing of the Avoidance Action Adversary Proceedings, the Trustee shall request from the Court Omnibus Hearing dates and serve a notice of the Omnibus Hearing dates on each of the defendants and their counsel.

Future Omnibus Hearings may be scheduled by the Court on an as-needed basis. Matters requiring a hearing in an Avoidance Action Adversary Proceeding shall be set for, and heard on, an Omnibus Hearing date unless the Court independently sets a different date, or upon a motion to the Court by any party for good cause shown.

B. Appearances at Omnibus Hearings

Defendants are not required to appear at the Omnibus Hearings unless:

- (1) such defendants have made a request for relief from the Court that will be heard at the Omnibus Hearing;
- (2) the Trustee has made a request for relief against a defendant that will be heard at the scheduled Omnibus Hearing and such defendant intend to contest that relief; or
- (3) the Court has directed the defendant to appear.

C. Trustee's Reports to the Court for Status & Motion Hearings

Before each Omnibus Hearing, the Trustee will submit a chart summarizing all open Avoidance Action Adversary Proceedings (the "Preference Status Chart") to the Court. The Trustee shall deliver the Preference Status Chart to the Court two days prior to the Omnibus Hearing.

Unless otherwise provided by separate order of the Court, the Trustee will inform the Court of the status of each Avoidance Action Adversary Proceeding at every Omnibus Hearing through the Preference Status Chart.

VII. Miscellaneous Provisions

A. Conflicts

Except as to Avoidance Action Adversary Proceedings that have been excepted from the Procedures and/or to the extent any conflict arises between the Procedures and any other applicable rules, the Procedures shall control with respect to Avoidance Action Adversary Proceedings.

B. Extending Deadlines & Modifications

Other than as provided in the Procedures, the deadlines and other provisions contained in the Procedures may only be extended or modified by the Court upon written motion and for good cause shown. Good cause for extending or modifying a deadline shall include the consent of the parties. Nothing contained in the Procedures shall prejudice the rights of any party to seek an order (a) limiting or expanding notice of, and hearings related to, such filings upon a showing of good cause; or (b) enlarging or reducing any time period under Bankruptcy Rule 9006(b) or (c).

C. Relief from Procedures

None of the Procedures shall prevent any party to an Avoidance Action Adversary Proceeding from seeking relief from the provisions of the Procedures by appropriate motion to the Court upon a showing of good cause.

D. Exchanging Documents & Information

None of the Procedures shall prevent the parties to an Avoidance Action Adversary Proceeding from voluntarily exchanging information or engaging in settlement discussions at any time. Voluntary exchanges of information shall not be construed as a waiver of any of the requirements or limitations contained in the Procedures.

E. Construction

The Procedures shall be construed by the parties in a manner that promotes the most expeditious and economical resolution of the Avoidance Action Adversary Proceedings and administration of the bankruptcy case.

F. Service of Procedures

The Trustee shall serve a copy of the Procedures and the Order approving the Procedures on each defendant in each Avoidance Action Adversary Proceeding and on any defendant in subsequently filed Avoidance Action Adversary Proceedings by U.S. mail, postage prepaid.

EXHIBIT B

NOTICE OF PROCEDURES

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

In re:

ARK LABORATORY, LLC,

Debtor.

Case No. 23-43403-MLO

Chapter 11

Hon. Maria L. Oxholm

**NOTICE REGARDING PROCEDURES GOVERNING
AVOIDANCE ACTION ADVERSARY PROCEEDINGS**

On April 12, 2023, the Debtor¹ filed a Chapter 11 petition. The Court confirmed the Plan on December 1, 2023. The Plan became effective on December 14, 2023, at which time, the Trustee was appointed to administer the Ark Laboratory Trust established under the Plan.

On _____, 2024, the Bankruptcy Court entered an *Order Establishing Procedures Governing Avoidance Action Adversary Proceedings* (the “Procedures Order”). If you are the defendant identified in the enclosed Summons and Complaint, you are subject to the Procedures Order and to the approved Procedures, copies of which are enclosed with this notice and the Summons and Complaint. **Please note the following deadlines with respect to the enclosed Complaint as governed by the Procedures Order apply to the Avoidance Action Adversary Proceedings:**

- ***Objection Deadline for Procedures*** – You may object to being subject to the Procedures by filing and serving a written objection within 21 days of the issuance of a summons. Upon receipt of a timely objection, the Court shall hear such objection at the next Omnibus Hearing and determine whether and to what extent the Procedures shall apply to an objecting defendant. An objecting defendant has the burden of establishing good cause to be exempted from the Procedures.
- ***Mediation Period*** – The parties to a Continued Adversary Proceeding must participate in mediation of this matter within 90 days of the defendant filing an answer

¹ All capitalized terms contained herein shall have the meanings ascribed to them in the Motion unless otherwise stated to the contrary herein.

to the complaint. The parties to a Disputed Adversary Proceeding may participate in mediation of this matter at any time after the defendant files an answer to the complaint; provided, however, the parties must participate in mediation before filing a motion under Fed. R. Civ. P. 56, as incorporated through Fed. R. Bankr. P. 7056 and before trial.

- ***Omnibus Hearing Dates*** – The Trustee, through counsel, will report generally to the Court on the status of Avoidance Action Adversary Proceedings at periodic Omnibus Hearings that have been set pursuant to the Procedures Order. No order or other relief related to the enclosed Complaint will be sought at such hearings absent separate and specific notice to the defendant or its attorney.

Absent such separate and specific notice, neither the defendant, nor its attorneys, are required to attend the Omnibus Hearings.

Should you have any questions regarding this Notice, the Procedures Orders, or the Complaint, please contact undersigned counsel for the Trustee.

Respectfully submitted,

TAFT STETTINIUS & HOLLISTER, LLP

By: /s/ Judith Greenstone Miller
Judith Greenstone Miller (P29208)
Kimberly Ross Clayson (P69804)
27777 Franklin Road, Suite 2500
Southfield, Michigan 48034
(248) 351-3000
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*Attorneys for Jason W. Bank, Solely in his Capacity as
Successor Trustee of the Ark Laboratory Trust*

Dated: November 14, 2024

EXHIBIT 2
(NOTICE OF OPPORTUNITY)

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

In re:

ARK LABORATORY, LLC,

Debtor.

Case No. 23-43403-MLO

Chapter 11

Hon. Maria L. Oxholm

**NOTICE OF SUCCESSOR TRUSTEE'S MOTION
TO ESTABLISH PROCEDURES GOVERNING
AVOIDANCE ACTION ADVERSARY PROCEEDINGS**

Jason W. Bank, Solely in his Capacity as the Successor Trustee of the Ark Laboratory Trust (the “Successor Trustee”), has filed papers with the Court seeking entry of an *Order To Establish Procedures Governing Avoidance Action Adversary Proceedings*.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you do not want the court to grant the motion, or if you want the court to consider your views on the motion, within fourteen (14) days, you or your attorney must:

1. File with the court a written response or an answer, explaining your position at:¹

**United States Bankruptcy Court
211 West Fort Street, 17th Floor
Detroit, Michigan 48226**

2. If you mail your response to the court for filing, you must mail it early enough so the court will **receive** it on or before the date stated above. All attorneys are required to file pleadings electronically.

¹ Response or answer must comply with F. R. Civ. P. 8(b), (c) and (e).

You must also send a copy to:

Taft, Stettinius & Hollister, LLP
Attn: Judith Greenstone Miller &
Kimberly Ross Clayson
27777 Franklin, Suite 2500
Southfield, MI 48034
(248) 351-3000
jgmiller@taftlaw.com
kclayson@taftlaw.com

3. If a response or answer is timely filed and served, the clerk will schedule a hearing on the motion and you will be served with a notice of the date, time and location of the hearing.

If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the motion or objection and may enter an order granting that relief.

Respectfully submitted,

TAFT STETTINIUS & HOLLISTER, LLP

By: /s/ Judith Greenstone Miller
Judith Greenstone Miller (P29208)
Kimberly Ross Clayson (P69804)
27777 Franklin Road, Suite 2500
Southfield, Michigan 49034
(248) 351-3000
jgmiller@taftlaw.com
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*Attorneys for Jason W. Bank, Solely in his Capacity as
Successor Trustee of the Ark Laboratory Trust*

Dated: November 14, 2024

EXHIBIT 3
(BRIEF – NA)

EXHIBIT 4
(CERTIFICATE OF SERVICE)

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

In re:

ARK LABORATORY, LLC,

Debtor.

Case No. 23-43403-MLO
Chapter 11
Hon. Maria L. Oxholm

CERTIFICATE OF SERVICE

I hereby certify that on November 14, 2024, my office electronically filed the *Successor Trustee's Motion To Establish Procedures Governing Avoidance Action Adversary Proceedings* with the Clerk of the Court which sends notices by operation of the Court's electronic filing service to all ECF participants registered to receive notice in this case.

I further hereby certify that on November 14, 2024, I served the above via first class mail upon the parties listed in the court's mailing matrix in the above captioned matter.

Respectfully submitted by,

TAFT STETTINIUS & HOLLISTER, LLP

Dated: November 14, 2024

/s/ Judith Greenstone Miller

Judith Greenstone Miller (P29208)

Kimberly Ross Clayson (P69804)

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*Attorneys for Jason W. Bank, Solely in his Capacity as
Successor Trustee of the Ark Laboratory Trust*

Label Matrix for local noticing
0645-2
Case 23-43403-mlo
Eastern District of Michigan
Detroit
Thu Nov 14 12:24:27 EST 2024

Ark Laboratory, LLC
1344 Addington Court
Lake Orion, MI 48360-2529

Gena's Timeless Cleaning, LLC
C/O Maxwell Dunn, PLC
220 S Main St
Ste. 213
Royal Oak, MI 48067-2679

Medcare MSO LLC
c/o Munsch Hardt Kopf & Harr, P.C.
Attn: Thomas D. Berghman
500 N. Akard St., Ste. 4000
Dallas, TX 75201-6605

Orchard Software Corporation
701 Congressional Blvd., Suite 360
Carmel, IN 46032-5633

United States of America
Commercial Litigation Branch
1100 L St, NW
Room 7012
Washington, DC 20530-0001

6600 Highland, LLC
29580 Northwestern Hwy
Suite #1000
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Farmington Hills, MI 48334-4274

The preferred mailing address (p) above has been substituted for the following entity/entities as so specified by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g) (4).

Avairis, Inc.
122 Garland Way
Waterford, MI 48327

(d)Avairis, Inc.
3724 Cheryl Dr.
Commerce Township, MI 48382

Benkoff Health Law, PLLC
7 West Square Lake Road
Bloomfield Hills, MI 48302

Bio Rad Laboratories, Inc.
1000 Alfred Nobel Drive
Hercules, CA 94547

(d)Bio-Rad Laboratories, Inc.
1000 Alfred Nobel Dr
1000 ALFRED NOBEL DR
1000 Alfred Nobel Dr
Hercules, CA 94547-1000

Hartford Fire Insurance Company
Bankruptcy Unit, H02-R, Home Office
Hartford, CT 06155

INTERNAL REVENUE SERVICE
P O BOX 330500
STOP 15
DETROIT MI 48232

Labcorp
PO BOX 12140
Burlington, NC 27216-2140

Medline Industries, Inc.
Box 382075
Pittsburgh, PA 15251-8075

Staples, Inc.
7 Technology Circle
Columbia, SC 29203

Stericycle Inc
PO Box 6575
Carol Stream, IL 60197-6575

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(u)6600 Highland, LLC

(u)Abbott Diagnostics

(u)Abbott Molecular

(u)Alere San Diego

(u)Auxo Investment Partners, LLC

(u)Comerica Bank

(u)Committee of Unsecured Creditors

(u)Coronis Health RCM, LLC

(u)Gemini Lab Group, LLC

(u)Humana Dental Insurance Co.

(u)Humana Insurance Company

(u)Humana Medical Plan of Michigan, Inc.

(u)McLaren Medical Laboratory

(u)Medical Real Estate Group, LLC

(u)Only One Hub

(u)The Peninsula Fund VII Limited Partnership

(u)Applied Imaging

(u)Easterseals Michigan

(d)Fishman Stewart, PLLC
800 Tower Drive
Suite 610
Troy, MI 48098-2843

(d)Healthcare Appraisers
2101 NW Corporate Blvd
Suite 400
Boca Raton, FL 33431-7319

(d)Orchard Software Corporation
701 Congressional Blvd.
Suite 360
Carmel, IN 46032-5633

(d)Polar Ice Co.
47943 Van Dyke Ave.
Shelby Twp., MI 48317-3254

(u)Andrew R. Vara

(u)Rachel R. Brown

(u)Russell Long

End of Label Matrix
Mailable recipients 271
Bypassed recipients 25
Total 296